IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5484 of 2007()

CRIME NO. 357/07 OF AROOR POLICE STATION

PETITIONERS/ACCUSED:

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1. ROJEN, AGED 22 YEARS,
   S/O. JOSEPH, PADINJAREPULIKKEZHATH,AROOR PANCHAYAT
   AROOR, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

2. SURESH, AGED 28 YEARS,
   S/O. PURUSHOTHAMAN, ANGMALIVELI, AROOR PANCHAYAT,
   AROOR, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

3. BINU, AGED 22 YEARS,
   S/O. RAMESAN, KALARICKAL, AROOR PANCHAYAT,
   AROOR, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

4. SHELBI ALIAS JOSEPH, AGED 22 YEARS,
   S/O. ANTONY, DHARMEDATH, AROOR PANCHAYAT,
   AROOR, CHERTHALA TALUK, ALAPPUZHA DISTRICT.

5. SHIBU ALIAS SEBASTIAN, AGED 28 YEARS,
   DHARMEKKAD, AROOR PANCHAYAT, AROOR,
   CHERTHALA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.K.J.THOMAS STANLEY

RESPONDENTS: COMPLAINANT:

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1. THE SUB INSPECTOR OF POLICE,
   AROOR POLICE STATION, AROOR, CHERTHALA TALUK.

2. CIRCLE INSPECTOR OF POLICE,
   KUTHIATHODU, CHERTHALA TALUK.

3. THE DEPUTY SUPERINTENDENT OF POLICE,
   CHERTHALA.

4. THE STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 5484 & 5517 of 2007

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Dated this the 12th day of September, 2007

O R D E R

Applications for anticipatory bail. The petitioners face allegations, inter alia, under Section 324 I.P.C. and Section 27 of the Arms Act. The petitioners were allegedly members of an unlawful assembly of persons, who, in prosecution of their common object, unleashed an attack on the victim. Prior animosity is the alleged motive. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submit that the petitioners are absolutely innocent of the allegations levelled against them. The defacto complainant is a prominent member of the ruling political party and it is only because of that, that allegation of non-bailable offence under the Arms Act has been included. Even going by the allegations, the first accused alone has wielded the weapon. In these circumstances anticipatory bail may be granted to the petitioners, submit the learned counsel.

3. The learned Prosecutor opposes the application. In so far as the other accused are concerned, the offences alleged are all bailable offences and the State has no objection in anticipatory bail being granted to the petitioners other than the first accused. So far as the first accused is concerned, it is submitted that the said petitioner/accused had wielded a dangerous weapon, a sword stick. The omission to include the allegation under Section 27 of the Arms Act in the F.I.R. cannot be reckoned as crucial as all allegations do appear in the F.I. statement itself. In these circumstances the first accused is not entitled for anticipatory bail, submits the Prosecutor.

4. I have considered all the relevant inputs. I am satisfied that accused 2 to 6 can be granted anticipatory bail. So far as the first accused is concerned, I find absolutely no features in this case which would suggest or warrant the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The petitioner/A1 may be directed to appear before the Investigator or the learned Magistrate having jurisdiction and thereafter seek regular bail in the ordinary course.

5. The application for anticipatory bail of the first accused is accordingly dismissed. Needless to say, if the petitioner/A1 appears before the Investigating Officer or the learned Magistrate and applies for bail

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

6. In the result:

(1) The application for anticipatory bail of accused 2 to 6 is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners/accused 2 to 6 shall surrender before the learned Magistrate on 19.9.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners/A2 to 6 shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 20.9.07 and 21.9.2007 and thereafter shall appear on all Mondays and Fridays between 10 a.m. and 12 noon for a period of six weeks and subsequently as and when directed by the Investigating Officer in writing to do so.

(d) If the petitioners/A2 to 6 do not appear before the learned

Magistrate as directed in clause (1) above, these directions shall lapse on 19.9.06 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(b) If the petitioners/A2 to 6 were arrested prior to their surrender on 19.9.2006 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Magistrate on 19.9.2007.

(R. BASANT)
Judge

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